



RESTRUCTURING OF THE NATIVE COURTS IN IBADAN 1952-1960

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.....District officers and Native Authorities alike should ever be on the lookout for ways of improving the Native Courts and unless there is any question of conflict with the Law, improvements should be effected as the need for them is realized.

R.E Brown¹

INTRODUCTION

The Native Courts in Ibadan required that it be reorganized since about the early 1940s. This need was occasioned by the new Native Court Ordinance, 1933 which was to introduce some changes to its operation under the Judicial Reform of 1933 in the entire country. The new ordinance incidentally created some problems, particularly in the process of its implementation in different parts of the Region. One significant problem bedeviling the Native Courts Ordinance, 1933 was the manner in which cases were being transferred to either the Magistrate Courts or the High Courts. As a result of the preclusion of lawyers from appearing in the Native Courts they depended considerably on the D. O.'s power of transfer. The use of the power of transfer by the D. O. was contrary to the spirit of the Native Courts Ordinance, the object of which was to provide safeguards of justice and to redress wrong, in exceptional cases.

¹NAI, Iba Prof 1/1, 1109 Vol IV, Native Courts Re-organization. R.E Brown, the Secretary Western Provinces to ALL Resident and D.O.S, date 20th January, 1949

In response to the need for reform of the Native Courts system in Nigeria, four commissions of inquiry for the Northern, Eastern and Western Provinces and for the Lagos colony were set up to look into how the Native Courts might be reformed. The colonial administration appointed Mr. Neville, J. Brooke to preside over the commission, while each Province was responsible for choosing members who were to work with him². (National Archives Ibadan (NAI) Iba Div. 1/1, 1109 Vol. IV) In Western Provinces, the commission was composed of the Hon. A Soetan, the Aro of Kemta, N.E. Whiting Esq, Senior D.O., Chief J. R. Turton, the Risawe of Ilesa and E.C Phillips Esq. O.B.E while Mr. Dodwell acted as Secretary to the commission. (NAI Iba Div. 1/1, 1109 Vol. IV)

The administration in Ibadan could not wait for the time the Brooke's commissions would finish its work before the Native courts in Ibadan city were reformed (NAI Iba Div. 1/1, 1109 Vol. V). This was because it would take a long time before the desired reform could be achieved if it had to wait. As the government was giving consideration to the Report of the Brooke's commission, the Provincial office in Ibadan went ahead with the deliberations on 'the reform of the Native Courts' (NAI Iba Div. 1/1, 1109 Vol. IV).

The D.O., J. Hart, on the 3rd of June, 1952, sent to the Resident, Ibadan Province, H.K. Robinson, a memorandum on how Ibadan city's Native Courts could be reformed. (NAI Iba, Div. 1/1, 1109 Vol. IV Re-organisation of the Native Court). In his memorandum, the D.O. did not only condemn the Native Courts for their irregular sittings, but also found fault in the improper disposal of the courts records, correspondence and accounts The D.O. noted that for as long as the proportion of illiterate courts members remained so high, it would be difficult for the court to supervise properly the work of its staff and curb their unwarranted powers. It was also his desire that the 'evil influence' of the Babaogun operating in the

divorce courts be checked. The D.O. then put forward a number of recommendations in respect of reform of the Native Courts in Ibadan. In the sphere of the administration of the courts, the D.O recommended that the Senior Court Clerk be renamed the Registrar, who should be responsible in respect of all courts for the maintenance of a general cause list, the issue of summonses and hearing notices and the maintenance of the cash book (NAI Iba, Div. 1/1, 1109 Vol. IV Re-organisation of the Native Court).

The Native Administration Treasurer was recommended by the D.O., to collect all fees, fines and deposits and be responsible for all payments made from courts revenue. The court clerk was recommended to be responsible only for the maintenance of the court's records and the submission of judgments to the treasurer of the Native Administration. Again, the D.O. recommended the reorganization of the Judicial Court of Appeal on totally different lines. These were the gradual withdrawal of Native Authority members from the judiciary and the temporary direct control of the divorce courts by Administrative Officers in Ibadan (NAI, Iba Prof 1/1 1109 Vol. I). In order to reduce the increasing rate of matrimonial disputes in the Native courts, the D.O. proposed that fees in divorce courts be doubled and that a set of rules on divorce cases be introduced (NAI, Iba Prof. 1/1 1109 Vol. I). The D.O. further proposed that the existing court's instructions be revised, the staff of the Native Courts be trained and that the channels of appeal be reorganized.

The Resident, Ibadan Province, H.K Robinson acknowledged the proposal of the D.O and was relieved to see that some determined effort was being made to improve the efficiency of the native courts in Ibadan. The Resident wasted no time in directing that the Secretary, Western Provinces, D.A Murphy should inform the chief Registrar in Lagos that a proposal had been made to the effect that the Ibadan Judicial Native Court of Appeal be abolished and replaced by an Ibadan 'Customary Court of Appeal' (NAI Iba, Div. 1/1, 1109 Vol. IV Re-organisation of the Native Court). This proposed court was to be composed of a single Judge, who was to be a local barrister, assisted by two traditional assessors. In respect of appeals,

appeal from the proposed courts of appeal was lie to the Supreme Court. Incidentally, both the type of bench and the channel of appeal proposed by the D.O. were in agreement with the recommendations of the Brooke's commission of Inquiry which was submitted in 1952. (Brooke; 1952: 10)

The proposals for the reform of the Native Courts in Ibadan by the D.O. needed to be properly considered before it was implemented. It was for this reason that the Western Region government, in January 1953 set up a select committee to look into the issues of the Native Courts reform in Ibadan¹⁷. This select committee was to be presided over by S.A. Akinfenwa while the other members were, S. A. Oloko, J.A Adeyemi, B. Keremi, H.A. Apampa, E.P Folarin and T.L. Oyesina, who was a co-opted member (NAI, Iba Prof 1/1 1109 Vol. I).

The Process of Reorganisation

The principle adopted by select committee was that the whole of the city's Native Courts should be reformed and that the judiciary should be 'entirely' separated from the executive. This meant the Chiefs and councilors accepting appointments to the Judicial Division must surrender their membership and stipend on the Native Authority Council. The select committee finally recommended that a Judge of the Appeal Court was to be appointed. The judges of this court were expected to possess legal qualifications. (Keay, Richardson; 1966:81-97).

What was essential was the appointment of a person with experience and understanding of native law and custom, a person of integrity and good compartment, commanding respect of the people. The committee recommended that the candidate for the position of Chief Judge must have been conversant with the procedure in the Magistrate's Courts. (Brooke; 1952: 10) The Chief Judge was to sit with Assessors, who

were expected to be chiefs, councilors, literate or illiterate, preferably nominated by himself for consideration and appointment by the Resident. Any of the assessors so recommended were not to hold office as a member of the Native Authority. The Chief Judge was to preside over the hearing of appeal cases and was to be the head of all judicial staff. He was not only to be responsible for supervision of all the Native Courts in Ibadan city but he was also to report any case of neglect, abuse or inefficiency to the Resident. (Brooke; 1952: 10) The Chief Judge, in cooperation with his subordinate judges was to record native law and custom with regard to land, inheritance, marriage and divorce and custody of children for subsequent codification. He was also, as recommended, responsible for making suggestions for the appointment of judges and assessors to all the lower courts in Ibadan. He was to be responsible for the efficient and smooth running of the Judicial Division of the Ibadan District Native Authority. He was also to be directly responsible to the Resident who was to appoint him in accordance with the Native Courts Ordinance cap 142.

The select committee proposed that, the first appointment of the chief Judge should be on contract of not more than three years. This was to enable the position to be reviewed at the end of that period, for consideration as to whether better qualified candidates could be available. This first chief judge was to be appointed by a two-third majority of the council. This was to ensure that the appointment was acceptable to the people. However, a fixed salary of =N2, 400 (£1,200) per annum was considered to be the minimum reasonable remuneration for the chief judge, while =N=1,440 (£720) per annum was recommended for the judges of the lower courts and =N=480 (£420) per annum for assessor. (NAI, Iba Prof1/1 1109 Vol. 1)

Moreover, the select committee suggested that bailiff should be appointed to the Appeal court if execution of writs of *Fifa* was to be issued by the Native Courts. (NAI, MLG (W) 3, 399/3) As to quorum in the

courts, it was proposed that no quorum was necessary in either the lower courts or the Appeal Court. The presiding Judge might sit alone in the absence of any or both his assessors. But then, in the case of leave or protracted illness, the Chief Judge in the case of the lower courts or the Resident in the case of the Appeal court was to arrange relief from among the Judges. (NAI, MLG (W) 3, 399/3)

It was further suggested that all the Judges of the lower courts should be responsible to the Chief Judge for discipline, but he was not to suspend or dismiss any Judge or Assessor without the approval of the Resident. The Chief Judge and the Judges of the lower courts were to be permitted to consult the crown counsel for enlightenment on any difficult problem that may confront them in the execution of their judicial duties. (Report of the Native Courts (Western Provinces) Commission of Inquiry, Lagos, 1952.) In March, 1952, the Brooke's Commission of Inquiry on the Native Courts submitted its report to the government. The following, were the recommendations put forwards by the commission on the Native Courts in Western Provinces.³⁰

Recommendations of the Brooke's Commission of Inquiry

The commission recommended that Administrative officer should cease to hear appeals but should continue to control the Native Court System while the power of review should be limited to cases in which it was clear that there had been a substantial and grave miscarriage of justice. (Report of the Native Courts (Western Provinces) Commission of Inquiry, Lagos, 1952) It was considered that where there was no Native Court of Appeal, the use of Administrative Officer's power of review should normally be restricted to some specified cases. Again, the commission proposed to retain appeal to the Native Court of Appeal because the commission regarded the Native Courts of Appeal as the point of integration of the dual system of courts and also as the most important factor in the improvement of the Native Courts.

The commission considered that the Magistrates' Courts were not suitable courts of Appeal from Native Courts. The workload of the type of cases which Magistrates Courts were dealing with did not favour a long list of land disputes which was taking so much time. It was recommended that jurisdiction in land cases be confined to the Supreme Court, on transfer when necessary, or where there was no Native Court having jurisdiction. Even appeal from the Native Court of Appeal with a ceiling such as a minimum value of =N=100 (£50) on a point of law with the leave of the court was to be confined to the Supreme Court. Appeal was also to lie to the West African Court of Appeal where the value of the subject matter was =N=400 (£200) or on a point of law. (Report of the Native Courts (Western Provinces) Commission of Inquiry, Lagos, 1952)

The success of the Ibadan Land Court, notwithstanding, the comments and proposals submitted for consideration to the Brooke Commission during its sitting helped the commission to conclude that land courts established to try only land cases served a limited purpose. The commission believed that what was required was an all-round improvement in Native Courts and a special court had required was an all-round improvement in Native Courts and a special court for cases beyond the competence of C and D grades of courts. Simple land cases were to be left to the Native Courts while improved qualifications were suggested for personnel of all courts of higher grade which was to be a Court of Appeal as a connecting link with Supreme Courts. This was to make a special land court unnecessary. (Brooke; 1952: 10)

It was suggested by the commission that provisions with regard to transfer of cases be provided for in a new Native Courts ordinance and that it should form a separate part by itself. Rather than lay down grounds on which a transfer must be ordered the commission felt that so much depended on the power of transfer in keeping the equilibrium in a dual system. The grounds should be fairly clear where it was a question of interest or competency or where the law to be administered appears to be outside the

jurisdiction of the particular court. It was also suggested that appeal to the English courts against a refusal to transfer in certain cases might be considered. The commission further recommended that the selection of members of courts should remain a matter for the Resident acting on the advice of the D.O. (Brooke; 1952: 10). The court clerk was suggested to be known as a Registrar and that Bailiffs also should be appointed as the business of the Native Court may require. In section 24 of the Native Courts Ordinance, regarding the restriction on the right of audience of professional lawyers before the Native Courts, the Commission recommended that this restriction should continue until such time as the competency of the Native Courts could allow any change.

On the issue of revenue and expenditure of the Native Courts, no evidence was brought before the Commission but a suggestion was made regarding the financial relationship between Native Administration and Native Courts. It was suggested to the Commission during its sittings that this financial relationship be stopped and that court revenue should go to the Government. But the Commission was 'inclined to think that the expenditure on the Native Court system should be a regional responsibility'. Perhaps, the regionalization that was introduced by the constitution influenced this thinking of the commission. (Brooke; 1952: 25) The commission of Inquiry recommended that an officer should be appointed as a Native Court's Adviser. His duties should not only be advisory but also 'be a coordinating authority in regard to all matters relating to the Native Court system and supervise the preparation of handbooks on customary law to remove uncertainty in courts' decision. The implementation of these recommendations made by the Brooke's commission of Inquiry was to wait till after 1954.

The Contributions of the Ibadan Native Authority Council to the Reorganisation

In response to the call by Western Regional Government for comments from interested individuals and local authorities, the Ibadan Native Authority Council appointed an eight man sub-committee to make

recommendations on the implementation of the Native Court reform and to discuss the full details of the change required. After proper consideration had been given to the various suggestions, comments and proposals from various quarters and even from among the chiefs in Ibadan, the Regional government modified the entire recommendations. The final modified proposals took the following form: The Judicial Court of Appeal was to consist of a single literate Judge, assisted by two assessors to be appointed by the Resident. (NAI, Iba Prof 1/1, 1109 Vol. IIA NAI, Iba Prof 1/1, 1109 Vol. II A) Each of the lower courts namely, Bere I and II, Ojaba II and III and Land Courts I and II was to consist of a single literate judge sitting with two assessors appointed by the Resident. (NAI, Iba Prof 1/1, 1109 Vol. II A) The Resident was to appoint a panel of assessors consisting mainly of chiefs from whom two at a time would be selected in rotation for each bench. Quorum in the Native Courts was to be formed when the judge and at least one of the assessors were present. But in the absence of a Judge for longer than one week, an acting Judge (normally one of the assessors was to be appointed by the Resident). For this reason, perhaps, at least one of the assessors on each bench was to be literate. An important aspect of the modified proposals was that the chief Judge of the Judicial Court of Appeal was expected to advise the Resident on the appointment of the other judges of the lower courts and assessor. This, to some extent, gave the chief judge some level of power and recognition in Ibadan politics. The final suggestion put forward in relation to the remuneration of the bench was that the chief Judge should earn =N=2,400 (£1,200) per annum, other Judges of the lower courts were to earn =N=1,440 (£720) per annum while the assessors were to earn =N=480 (£240) per annum. (NAI, Iba Prof 1/1, 1109 Vol. IIA)

Reactions of the Public to the Proposed Reorganisation

No sooner the modified proposals of the Native Courts reform were made public by the Western Region Government than reactions began to ‘flood the tables’ of the government. The Olubadan and the senior chiefs in Ibadan were vehemently opposed to the principles of the reform proposal. (NAI, Iba Prof 1/1,

1109 Vol. IIA) The reasons for their opposition are not far-fetched. The Olubadan and the senior chiefs lost their position on the benches of the Naïve Court of Appeal because they could not fulfill the requirements. The Chief Judge of the Native Court of Appeal and its two Assessors were not only to be literate persons but were also required to be able to read and understand records of proceedings. By implication, this provision did not only take away the role of the Olubadan as the judge of the erstwhile Judicial Council established in 1914 but also dispossessed the illiterate senior chiefs of their erstwhile judicial powers. This was an indication of a shift in political power relation. It is against the background of this shift in political power relation that the socio-political change that Ibadan undergone can be appreciate.

In order that the Olubadan and the senior chiefs would be able to drive home their conservative views, a lengthy memorandum was sent to the government stating their feelings and suggestions. The contention which was brewing over the memorandum submitted by the Olubadan and the senior chiefs spurred a prominent Ibadan indigene, Hon. M. A. Aboderin to warn the government that any reform to the native system in Ibadan should not be at variance with the Brooke Commission's recommendations which were to be applicable to all Native Courts in Nigeria. The fear that Hon. M. A. Aboderin nursed was that a bad precedent should not be created by the government at Ibadan out of sheer sympathy for the conservative groups. As if the Senior D.O., Mr. Lewis was heeding the warning of Hon. M. A. Aboderin, he swiftly informed the Olubadan and the senior chiefs that if they wished to further dispute the proposals of the Native Courts reform, they should either present their views in the House of chiefs or through one of their members in the Western Regional House of Assembly. It would appear that the Ibadan Native Authority Council, the Olubadan and his chiefs were not alone in the battle against the proposed reform. The discussion at other District Councils in Ibadan Division elicited the same opposition. The general opinion of the various Native Authority Council in the Division was that the traditional rulers and their chiefs be

allowed to preside over Native Courts ‘whether they are literate or not’ because “our chiefs have their own sense of justice in all matters.” (NAI, Iba Div 1/1, 1109 Vol I, Petition by the Junior Chiefs and Mogajis of Ibadan to the Resident, D.A. Murphy) This general view of the Native Authority Council in the division ran counter to the ‘lines to be pursued by the government.’ (NAI, MLG (W) 3,399/3, Reform of Native Courts in Western Region)

Implementation of the Proposed Reorganisation

The proposed Native Court reform, to the Western Region Government, was to be pursued along the lines of ensuring the consolidation and retention of all that was best and the elimination of all possible sources of corruption in the Native Courts System in Ibadan. After exhaustive consideration of the proposals for reform, Chief I.B Akinyele was appointed as the first Chief Judge of the Judicial Native Court of Appeal. (NAI, MLG (W) 3,399/4) As soon as Chief I. B. Akinyele was chosen as the Chief Judge, the responsibility of nominating candidates for the ‘vacant’ benches of the lower courts fell on him. Consequently, Chief I. B. Akinyele nominated seven prominent Ibadan indigenes as Judges of the lower courts in line with the provisions of the approved modified proposals. (NAI, Iba Prof 1/1, 1109 Vol. III) Those nominated were Chief S. O.M. Osunware, O. H. Adetoun, Chief J. L. Ogunsola and L. A. Salami’. (NAI, Iba Prof 1/1, 1109 Vol III) On the 17th April, 1954, the Minister for local Government, Chief Obafemi Awolowo approved the appointment and the employment by the Ibadan District Council of the Chief Judge, Chief I. B. Akinyele and seven other nominated Judges of the lower courts. (NAI, Iba Prof 1/1, 1109 Vol. III).

Most of the seven newly appointed judges of the lower court and chief I.B Akinyele himself were members, both of the I.N.A and also of the Native Courts. As soon as these men were appointed, the

Resident, Ibadan Province, H.K Robinson, made public the opinion of the government on the issue of dual membership, that no holder of a judicial office should at the same time hold an executive post. Consequently, Chief I.B Akinyele, Obisesan O.B.E. Chief Ogunsola and Chief S.O.M Osunware were called upon to resign from the I.D.C.

The Acting Permanent Secretary, Western Region, presented the case for the dual membership of Chief I.B Akinyele, a traditional member of the council who escaped being caught by section 24 (d) of the Region Local Government Law of 1952 and as a result could continue to hold both his positions. (Brooke; 1952: 15) This concession that was granted Chief I. B. Akinyele, the justification notwithstanding, it could perhaps be a clog in the wheel of fair administration of justice in Ibadan. With the stage of development of political principles in the administration of Ibadan, this dual membership was 'accepted'. In a situation where talent was limited, it was important to use all that was available to the best benefit. Chief I.B Akinyele had spent a considerable number of years on the council that he had acquired more ideas of the duties and responsibilities of a citizen than others who had not this kind of experience.

But then, perhaps, in order to ensure the possibility of impartial administration of justice, all cases in which the I.D.C was a party, was to be transferred from the Judicial Court of Appeal to the Magistrate Court. This was probably because it could be difficult for members of the council after discussing a matter in council, to go and sit to adjudicate on the same matter without being biased. As if to assuage the feelings of the Senior Chiefs that were not included on the list of the Judges and Assessor of the lower courts, Chief I. B. Akinyele recommended to the government that they should be given certain allowances as compensation in lieu of the court allowance which they had been drawing before. This suggestion of Chief I.B Akinyele, though supported by the senior D.O Mr. Lewis and the Resident, H.K. Robinson, was

rejected when it was presented to the I.D.C for consideration at the request of the Minister for Local Government, Chief Obafemi Awolowo (NAI, Min. (W) 1, 1109 Vol. IV),

On the 21st April, 1954, the reformed Native Court system was inaugurated at a public ceremony at Mapo Hall, Bere in Ibadan, at the instance of the Minister for Local Government, Chief Obafemi Awolowo (NAI, Iba Prof 1/1, 1109 Vol. II A) After the inauguration of the reformed Native Courts, the courts began their work in earnest on the 26th April, 1954. The Native Court reform of 1954 played significant role in improving the operation of the Native Court in Ibadan. The appointment of literate Judges who were assisted by a panel of assessors selected from among persons of proven integrity did much to ensure that justice was not only dispensed but was dispensed impartially and speedily. (NAI, Iba Prof 1/1, 1109 Vol. II A). Again, in 1954, at the beginning of July, 38 cases were outstanding on the cause list of Ojaba I Native Court, but at the end of that month, outstanding cases had reduced to 24. In this same court, at the end of August, the outstanding cases had further reduced to 18, despite the fact that more cases were still coming in, during the month. Again, after a year that the reformed Native Courts in Ibadan had started to operate, there was a marked improvement on the disposal of cases on the list. At the Ojaba I Native Court, in February, 1955, 102 cases were outstanding on the cause list, but at the end of March it had come down to 88 despite the fact that more cases were still coming in, during the month (NAI, Min. Jus. (W) 1,1109 Vol. VI, Native Courts Reorganization.) The work of the Judicial Court of Appeal improved tremendously as a result of the reform of 1954. it should be recalled that in 1949, the outstanding appeal cases at the Native court of Appeal were 1,957 about three years after the reform, the outstanding appeal cases at the Judicial Court of Appeal came down to 361 (NAI, Min. Jus. (W) 1, 1109 Vol VI, Native Courts Reorganization.)

The rule-making tendency of the Native Courts continued after the reform 1954. In 1954, Drumming Rules and orders were promulgated to check indiscriminate drumming and to prevent the disturbance of public peace in the city. Under this rule, permits were also to be taken before any public drumming in the city could take place. (NAI, MLG (W), 17128, By Laws and Orders made by Native Authority) Prominent among other rules and orders that were promulgated by the Native Courts after 1954 were the Native Authority Hawkers and Petty Trader Rules. (NAI, MLG (W) 2, 10877 Vol. I, N.A Liquor Licensing Rules) Far beyond regulating societal conduct, the rules and orders made by Native courts also tended to generate revenue for the Native Administration. Provisions were almost always made in Rules and Orders for the Native Courts to inflict punishment of imprisonment term or an option of fine on defaulters within the confines of its jurisdiction. Besides, Licenses and permits that were issued perhaps, helped to ‘beef up’ the financial base of the Native Administration or the local government.

One major problem that the Native Court was facing after the Native Courts reform of 1954 was that of the exorbitant charges of surveyors. (NAI, Iba Prof 1/1, 1109 Vol. II A) It should be recalled that a survey plan of a disputed parcel of land was required at court as evidence to enable the bench to get at the true picture of the issues in dispute. Since the inauguration of the reformed Native Courts, majority of litigants in land cases were in great difficulty and distress through the exorbitant charges of surveyors. They charged between =N40 (£20) and =N=100 (£50) for each plan. (NAI, Iba Prof 1/1, 1109 Vol. IIA)

The Chief Judge of the Judicial Court of Appeal, Chief I. Akinyele, made a case for the possibility of private survey being carried out at the government survey Department, in order to reduce charge reasonably. The average of survey fees collected from applicants by the government survey department for ten surveys of land in dispute in Ibadan in 1954 was between =N=30 (£15) and =N= 160 (£80) (NAI, Iba Prof 1/1, 1109 Vol. IIA) As soon as the public were aware of the possibility of getting their land surveyed by the government survey department, they began to avail themselves of the opportunity of this cheaper service from the government. (NAI, Iba Prof 1/1, 1109 Vol. IIA).

One would have expected that the *Olubadan* and his senior chiefs, after about ten months that the reformed Native Courts had started to operate, would have given up their struggle against the implementation of the reform. But they still went ahead to suggest to the government to suspend the reform. (NAI, Iba Prof 1/1, 1109 Vol. IV) The Acting Secretary, Western Region, W.M Milliken, replied them that the government could never contemplate any suggestion of a return to the old system', with all its inefficiency and corruption. In 1955, after the demise of the *Olubadan* Igbintade, the throne of the *Olubadan* became vacant and the Chief Judge of the Judicial Court of Appeal, Chief I. B. Akinyele, the *Balogun* was appointed as the new *Olubadan* and his appointment was approved by the government in the same year. (NAI, Iba Prof 1/1, 1109 Vol. IV) As his appointment as the new *Olubadan* was approved on the 12th of February, 1955, his appointment as the Chief Judge automatically came to an end. (NAI, Iba Prof 1/1, 1109 Vol. IV, Acting Secretary, Western Region to the Chiefs Ibadan, dated 31st July, 1954) It was not easy to find a suitable man with the necessary experience for the vacant post of the Chief Judge of the Judicial Court of Appeal. (NAI, Min. Jus. (W) 1,1109 Vol. IV) After much search, the Acting Resident, Ibadan Province, D. M. Elliot appointed Mr. L.O Fadipe, a Magistrate, as the Chief Judge. As if to hinder the progress of the reformed Native Courts, some conservative elements on the Ibadan District Council (I. D. C.) adopted a resolution rejecting the appointment of Mr. L.O Fadipe, who was a Magistrate in the Federal territory of Lagos. The council maintained that the post was not advertised and that it was not informed about the vacancy. (Southern Nigerian Defender, 'I.D.C Rejects L.O Fadipe, Issue of 6th December, 1955)

This submission of the council could not have been true since the Resident, D.A Murphy, had earlier informed the I. D. C. through the D. O., Ibadan Division, about the vacancy. Despite the opposition of the I. D. C against the choice of Mr. L.O Fadipe, he assumed duty on the 20th of February, 1956. (Southern Nigerian Defender, 'I.D.C Rejects L.O Fadipe, Issue of 6th December, 1955) The retention of Mr. L.O

Fadipe as the Chief Judge of the Judicial Court of Appeal by the Regional Government was to ensure ‘that the appointment of Native Courts members be kept as far as possible completely free from political influence’(NAI, Min Jus. (W) 1/1, 3451, ‘Customary Courts’). The reorganization of the Native Courts in Ibadan established a framework in the I. D. C. area which could be readily adapted to meet the requirement of the Customary Court recommended by the Native Courts Commissions of Inquiry of 1952. (NAI, Min Jus. (W) 1/1, 3451, ‘Customary Courts’) It was the opinion of the Brooke Commission of Inquiry Western Region, that greater certainty was required in the customary law being administered in the Native Courts, while further improvement was necessary in their practice and procedure. In order to achieve this, the government made it clear that the procedure of Customary Courts was to be prescribed by rules of courts. (NAI, Min. Jus. (W) 1/13451, Permanent Secretary, to Mackenzie dated 20th February, 1957). In preparation for the implementation of the recommendations of the Brooke commission of inquiry regarding the Native Courts in Western Region, Native Court Presidents and Staff were made to under-go sessions of training ‘during the last week of June and the first week of July in 1957, under the direction of Mr. Fatai Williams, the Deputy Commissioner of Law Revision. (NAI, Min. Jus. (W) 1/13451, Permanent Secretary, to Mackenzie dated 20th February, 1957

In 1957, the Customary Courts Laws could not immediately come into force until some vital issues were settled. To enable the High Court to cope with the appeals that were to lie to it from the Customary Courts of Appeal, it was necessary to appoint three additional Judges. Again, there was also the need to plan the general court structure and to provide adequately for Customary Court of Appeal. (NAI, Min. Jus. (W) 1/13451, Permanent Secretary, to Mackenzie dated 20th February, 1957) The Customary Courts Law of 1957 provided for the establishment of Customary Courts of Appeal and Customary Courts of grades A, B, C and D. The main features of these courts are as follow: One or more Customary Courts of Appeal were to be established in each Division. The courts could either be a grade A or B and was to be presided

over by a Judge with legal qualifications, sitting alone or with assessors. (Elias; 1963: 141) The grade A Customary Court of Appeal was established in Ibadan, being a cosmopolitan center where civil cases involving debt, demand or damages of over =N200 (£100) were of common occurrence. (Brooke; 1952: 10)

The grade A Customary Court was expected to be presided over by a Judge of a grade equivalent to that of a Chief Magistrate. (Brooke; 1952: 10) It was, perhaps with this requirement in mind that Mr. L.O Fadipe was appointed as Chief Judge of the Customary Court of Appeal. Other Customary Courts in Ibadan in 1958 were of grade B category. The erstwhile Land Court I and II sessions were of this category too and were not only dealing with Land disputes but they also heard the more important other civil and criminal cases, within the limits of their jurisdiction as set out in the second schedule to the law. (Brooke; 1952: 10)

The Emergence of the Customary Court in Ibadan

On the 23rd of June, 1958 the Divisional Adviser, Ibadan Division, repealed the warrants of the Native Courts in Ibadan Division, in accordance with the powers conferred on him by section 3 subsection 3 of the Native Courts Ordinance cap. 142. Consequently, the Customary Courts Law of 1957 came into operation in Ibadan Division on the 1st of July 1958. (Supplement to the Western Regional Gazette Extraordinary No. 44, Vol.7, 1958- Part B) To enhance the proper functioning of the new Customary Courts in the whole of Western Nigeria, a series of courses were organized for the staff of the new Customary Courts in Western Region. On 24th of November, 1958, about ninety Customary Court Judges from different part of Western, Nigeria attended an eight-day course on court procedure at Ibadan. (Daily Times, Issue of 25th November, 1958) During the course, instructions given to participants covered aspects of criminal code, errors in native court's judgment, the growth of native tribunals and customary courts law.

Again, on the 22nd of August, 1959, the Western Nigeria government embarked on another comprehensive training scheme for improving the administration of justice in Customary Courts in the Region. (Daily Times, Issue of 22nd August, 1959, “Customary Court Judges in the West to Attend Lecture”) Over 4,000 Judges including courts’ staff from about 600 Customary Courts in Western Region attended this course which took place at Badagry. This course was designed to equip all judges of the customary courts with necessary judicial literature and to explain to them important aspects of their work. A Customary Court manual was presented by the Ministry of Justice to each participant at the course. In order to forestall the hitherto corrupt practices of court clerks, the new Customary Courts Law, 1957 revised the responsibilities and duties of court clerks. The clerk of a customary court was responsible for the proper maintenance of the accounts and records of the court and for safe custody of all sums in his possession. (NAI, Min. Jus. (W) 1/1, 3551, Account Duties and Responsibilities of customary court clerks.) Court clerks were to pay all court revenue in their possession to the treasury or to the bank, at the intervals ordered by council. This payment was to be made to the bank, at intervals ordered by the council, on the authority of the Treasurer.

Again, in respect of every Customary Court, the Treasurer was to maintain a separate court Deposit Account. In addition, a separate file was to be maintained in respect of each court in which original pages of the court’s deposit Register was to be placed as they were handed in by the court clerk. Effort by the government to tailor the customary courts law, 1957 continued even after the law had come into force. In doing this, the need to amend the Customary Courts Law, 1957 arose in 1958. On the 13th March, 1958, the Minister of Justice in Western Region, Chief F.R.A Williams made a statement on the reorganization of the Customary Courts on the floor of the Western House of Assembly. The reason for this was that ‘the reformation of the Customary Court system on more modern lines was not ‘keeping pace with the spectacular progress which had taken place in the field of local government. The aim of this Customary

Courts (Amendment) Bill was to enable the government to apply the Customary Courts law piecemeal. It was not considered possible to introduce the reform envisaged under the law throughout the Region at the same time. This Bill was passed after considering its essence. (House of Assembly Debates, Western Region of Nigeria, Official Report, 6th Session 1958)

However, the Western Nigeria Minister of Justice, Chief F.R.A Williams presented another Bill to further amend the Customary Courts law, 1957, on the 1st May 1959. (House of Assembly Debates, Western Region of Nigeria. Official Report, 7th Session 1959) The first major point which the proposed amendment dealt with was in regard to the appointment of Customary Courts members. This was in consonance with a part of the agreement reached at the constitutional conference in London in September and October, 1958. It was agreed at this conference that each Regional government should review the situation in its own regime and prescribe by legislation those Customary Courts and native whose members should be appointed on the recommendation or under the supervision of the Judicial Service Commission. (House of Assembly Debates, Western Region of Nigeria. Official Report, 7th Session 1959).

The second major point dealt with by this Bill was to remove the need for the Governor to confirm warrant establishing the various courts. The need for confirmation by the Governor was a relic of the old Native Courts Ordinance. This Bill also dealt with the qualification and disqualifications of members. Section of the amendment Bill merely embodied in legal form what had hitherto been the policy of the Regional government. That in grade 'A' courts, only persons with legal qualifications were appointed. Judges of grade B court were also required to be literate and some of them might also be required to pass legal qualifications. (House of Assembly Debates, Western Region of Nigeria. Official Report, 7th Session 1959) This same Customary Courts (Amendment) Bill of May, 1959 went on to deal with abolition of offences contrary to Native offences law and custom unless such were contained in written law. This again

was in consonance with the agreement reached at the constitutional conference in London in 1958. The agreement stated that, no person shall be convicted of a criminal offence other than an offence defined by written law. The right of legal practitioner to appear before Customary Courts was included in this Bill.

It should be recalled that before the introduction of the Bill, Legal Practitioners had started to appear before Grade A Customary Court. But the government felt that ‘there was no reason why Legal Practitioner should not also appear before grade B Customary Courts Judges who were required to be lawyers’ themselves. (House of Assembly Debates, Western Region of Nigeria, Official Report, 7th Session 1959) By this time, it was only in the Western Region that a legal practitioner could appear before a grade A Customary Court. The Director of Public Prosecution (D.P.P.) was vested with the power under the constitution to take over any criminal proceedings. But if the D.P.P were to take over proceedings in a court in which a lawyer cannot appear, then it would obviously be unfair that he should himself appear before the court. (House of Assembly Debates, Western Region of Nigeria, Official Report, 7th Session 1959) This was because this would not afford the defendant the opportunity of being represented by a counsel.

This was perhaps, one of the reasons why the power of transfer was needed. It was also to meet with other cases where it is considered in the discretion of the D.P.P., that a transfer order would be convenient. (House of Assembly Debates, Western Region of Nigeria, Official Report, 7th Session 1959) The amendment Bill also took care of the issue of supervision and control of the Customary Courts. The intention of the government was to see that Magistrates and suitable Grade ‘A’ and ‘B’ Presidents were appointed as supervising officers. In this Bill, there was comprehensive provision regarding the conditions of service of members of the customary courts. With the inception of the customary courts in Western Nigeria, the appointment of Customary Court Judges in the Region was made the responsibility

of the Western Nigeria Local Government Service Board. This Board was under the Chairmanship of Mr. J. S. O. Ogunnaike. The Board was composed of men of integrity and honour, whose decision could not be questioned. Before their appointment as members of the Local Government Service Board, one ad-hoc committee were set up in many parts of the Region to examine closely those who were eligible and whose legal reputation and integrity could not be doubted

Also, the Western Region Minister of Justice was responsible for the administration of the courts, the general working of the customary courts' law, rule of courts and other subsidiary legislation. (Daily Times, Issue of 31st August, 1959 p. 4 "West Government Outlines Policy for Appointing Judges") As regards the general supervision and control of the customary courts in the exercise of their judicial functions, the Ministry had power under law to appoint supervising officers to assist judicial courts in cases where it was considered necessary. In carrying out this supervisory duty, the supervising officers acted in a judicial capacity and not under the direction of the Ministry Justice.

The Ministry issued circular from time to time, giving general guidance where it appeared that a significant number of courts were generally executing their judicial functions in a manner manifestly beyond their legal powers or contrary to the rules of courts. (Daily Times, Issue of 31st August, 1959 p. 4 "West Government Outlines Policy for Appointing Judges") The Customary Courts law of 1957 continued to undergo series of amendment even after 1960. Prominent among these amendments were the Customary Courts (Amendment) Bill, 1962 and the Customary Courts (Amendment) Order, 1962.

CONCLUSION

The re-structuring of the Native Courts introduced significant changes in the operation of the lower court. It must be noted that the Native Courts was a veritable instrument which played significant role in the socio-economic development of Ibadan. This was reflected in the views of Ajayi thus: '...the pursuit of a

policy of economic and social development has greatly changed the circumstances under which men live and thus the introduction of money, cash cropping, commercial and industrial development, rail, and road communication, all so changed (Ibadan) ways of life that the old Customary Laws with regard to such matters as land, marriage, property and inheritance have been changing too.' (Ajayi; 1971: 116)

The restructuring of the Native Courts in Ibadan during this period witnessed a re-organisation of first: the channels of appeal which was a major problem of the operation of the Native Court earlier. Second, the Ibadan Judicial Court of Appeal was replaced with an Ibadan Customary Court of Appeal. It introduced properly trained personnel in to the administration of justice at the lower rung of the judicial system. The re-structuring also saw to the loss of judicial power not only of the Olubadan but also that of the other senior chiefs in Ibadan. This was a considerable shift in political power relation. On the whole, Administrative officers only retained the power to review judgment when it was particularly necessary. Finally, a bill was presented which was to introduce the Customary Court system to replace the erstwhile Native Courts. The Customary Courts Law of 1957 continued to be amended even after 1960. This re-organisation put the administration of justice at the lower level of courts on a 'sound and better' footing than what it used to be.

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